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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,749	03/07/2001	Mingliang L. Tsai	H0001805 (4300)	4760

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07/10/2003

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EXAMINER

NOLAN, SANDRA M

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 07/10/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/800,749

Applicant(s)

TSAI ET AL.

Examiner

Sandra M. Nolan

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claims

1. Claims 1 and 4-50 are pending.

Finality Withdrawn

2. The finality of the office action dated 29 April 2003 (Paper No. 10) is withdrawn and prosecution is reopened in order to apply the new ground of rejection set out below.

Rejections Withdrawn

3. All of the 35 USC 103 rejections set out in sections 8 through 10 of Paper No. 10 are withdrawn.

New Rejections

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 1772

6. Claims 1, 4-9, 11-17, 24, 26, 41-44 and ⁴⁶47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laplante et al (US 2002/0002238 A1) in view of Cahill et al (US 6,346,308).

Laplante, which deals with oxygen scavenging polymers (title) and packaging systems (abstract), is discussed in section 8 of Paper No. 10.

It fails to teach anhydride functional polybutadienes.

Cahill teaches at col. 5, lines 38 and 47-54 and in claims 19 and 23 of the patent, the use of maleic anhydride-modified polybutadiene in copolymers that scavenge oxygen. The Cahill compositions are used in packaging to extend the shelf life of packaged substances (abstract).

The references are analogous because they both deal with oxygen scavenging polymers.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the maleic anhydride-modified polybutadienes of Cahill in the compositions of Laplante in order to produce packaging that extends the shelf life of the packaged substances.

The motivation to employ the Cahill maleic anhydride-modified polybutadienes is found in its abstract, where their use to produce packaging that extends the shelf life of the packaged substances is taught.

It is deemed desirable to make packaging that extends the shelf life of the packaged substances so that less refrigeration or other expensive storage parameters is required.

Art Unit: 1772

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laplante and Cahill as applied to claims 1, 4-9, 11-17, 24, 26, 41-44 and 47-50 above, and further in view of applicants' admission concerning the conventionality of retortable EVOH on page 3 of the specification.

Laplante and Cahill are discussed above.

They fail to teach retortable EVOH.

Applicant admits, on page 3 of the specification, that retortable EVOH is known.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ retortable EVOH in the compositions and packaging suggested by the combination of Laplante and Cahill in order to produce packaging that is retortable.

The motivation to employ the retortable EVOH of the specification in the compositions and packaging suggested by the combination of Laplante and Cahill is found in the specification, where the conventionality of such EVOH is taught.

It is deemed desirable to make packaging retortable in order to facilitate sterilization of same.

8. Claims 18, 25 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laplante and Cahill as applied to claims 1, 4-9, 11-17, 24, 26, 41-44 and 47-50 above, and further in view of Tai (EPO 1033080 A2).

Laplante and Cahill are discussed above.

They fail to teach clays.

Art Unit: 1772

Tai—which discusses packaging in its abstract—is discussed in section 10 of Paper No. 10. Note that hydrotalcite is termed a thermal stabilizer at col. 20, lines 50-56 of Tai.

The references are analogous because they all deal with packaging.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the clays of Tai in the compositions and packages suggested by the combination of Laplante and Cahill in order to enhance the thermal stability of same.

The motivation to employ the clays of Tai in the compositions and packaging suggested by the combination of Laplante and Cahill is found at col. 20, lines 50-56 of Tai, where the use of the clay as a thermal stabilizer is discussed.

It is deemed desirable to make packaging that has enhanced thermal stability so that it can be processed and sterilized with minimal thermal degradation.

Response to Arguments

9. Applicant's arguments with respect to claims 1 and 4-50 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

Art Unit: 1772

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/305-5436. The fax number for after final communications is 703/872-9310. The receptionist answers 703/308-0661.



S. M. Nolan
Patent Examiner
Technology Center 1700

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